

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

DEBORAH J. WOOD,)	
)	
Plaintiff,)	
)	
v.)	Civ. No. 01-223-SLR
)	
ARTHUR C. HEBERER, III,)	
)	
Defendant.)	
)	

Robert D. Goldberg, Esquire, of Biggs and Battaglia, P.C..
Wilmington, Delaware. Counsel for Plaintiff.

Charles S. Knothe, Esquire, Wilmington, Delaware. Counsel for
Defendant.

OPINION

Dated: March 4, 2004
Wilmington, Delaware

ROBINSON, Chief Judge

I. INTRODUCTION

On April 5, 2001 Deborah J. Wood ("Wood") filed this diversity of citizenship¹ action against Arthur C. Heberer III ("Heberer") alleging conversion of property. (D.I. 1) On January 24, 2002, Heberer filed an answer denying the allegations and counterclaimed to retain a portion of the property under a constructive or resulting trust. (D.I. 13) A two day bench trial was held on March 25 and March 26, 2003. (D.I. 59, 60) Post-trial briefing was completed on September 25, 2003. (D.I. 64, 65) Pursuant to Fed. R. Civ. P. 52(a), the following are the court's findings of fact and conclusions of law.

II. FINDINGS OF FACT

1. Wood met Heberer in Virginia in 1985. (D.I. 60 at 14) She was a college student at Virginia Technical University and they were both married to others.

2. In 1986, Wood divorced her husband and, in 1987, began dating Heberer. (D.I. 59 at 114) She graduated from college, accepted a job from the duPont Company and moved to Wilmington, Delaware. (D.I. 60 at 14-15) Heberer owned an auto parts recycling business located in Salem, Virginia. (Id. at 15) He resided in Christiansburg, Virginia. Despite Wood's move to Wilmington, the parties continued their dating relationship.

3. In 1988, Wood bought and moved into a condominium

¹28 U.S.C. § 1332.

("Condominium") in Wilmington, Delaware. (Id. at 15-16)

4. In 1989-1990, Wood and Heberer performed extensive renovations on the Condominium. (Id. at 16-17) Heberer did not ask, nor did Wood pay him for his handiwork. (Id. at 17) Their dating relationship was exclusive, with Heberer staying over on the weekends at the Condominium.

5. In 1991, Wood accepted a job transfer to Florence, South Carolina. (Id. at 18) She moved from the Condominium. The Condominium was rented and Heberer managed it for Wood. (Id. at 23) After the move, Heberer visited Wood less frequently because the intensity of the relationship had decreased. (Id. at 19) Problematic for Wood was the fact that Heberer remained married to his wife, despite being separated since 1987. (Id. at 18)

6. In 1992, Wood purchased a townhouse in Florence, South Carolina ("Florence home"). (Id. at 20) Contemporaneously, Wood and Heberer resumed their relationship. They purchased household items and furniture for the Florence home. (Id. 19-20)

7. In 1994, Wood received a call from Sharon Metzler. (Id. at 21) Metzler said she was dating Heberer and that he was also involved with other women. (Id. at 21-22) When confronted, Heberer admitted having a relationship with Metzler as well as with other women. (Id. at 22) Wood ended the relationship. Sometime later, Heberer apologized and agreed to seek counseling.

They resumed the relationship and agreed to date exclusively.

8. In December 1994, Heberer proposed marriage and gave Wood an engagement ring, valued at approximately \$6,800. (Id. at 23; D.I. 59 at 74-75) A wedding date was not set. (D.I. 59 at 74-75)

9. In the early part of 1995, Wood was transferred back to Wilmington, Delaware. (Id. at 23) She sold the Florence home and received \$19,000 in profit. (Id. at 25-26) Wood deposited this money into a bank account held in her name with a Florence bank in South Carolina. (Id. at 25) Upon her return to Wilmington, Wood lived in an apartment. She and Heberer decided to buy a home together in Delaware. To facilitate this plan, Wood and Heberer opened a two signature bank account (the "PNC account") in Delaware. (Id. at 26) Wood transferred the \$19,000 profit from the South Carolina account into the PNC account.

10. On May 3, 1995, Wood and Heberer signed a sales contract to build a house at 146 Ramunno Circle ("Ramunno Circle"), Hockessin, Delaware. (Id. at 24) The purchase price was \$252,356. (DX4)

11. The PNC account was identified as follows: "Arthur C. Heberer, III OR Deborah J Wood." (PX5) The PNC account was maintained and used by the parties from 1995 to 2001. Wood's paycheck and bonuses were automatically deposited into the account. (D.I. 59 at 46; D.I. 60 at 31; see PX5 at P-27, P-39,

P-60, P-68, P-71, P-76, P-81, P-92, P-100; PX6 at P-104, P-107) Heberer deposited funds periodically into the account. (D.I. 60 at 31-32) Both had unrestricted access to the funds. (D.I. 59 at 10; D.I. 60 at 38)) Automatic Teller Machine ("ATM") withdrawals were made in Virginia and Delaware. (PX5 at P-64, P-69, P-77, P-81, P-85, P-96) The mortgage for the Ramunno home was paid monthly through an online banking deduction as part of the PNC account. (PX5 at P-44, P-86; PX6 at P-101) Household expenses were paid with funds from this account. (PX5, P-65, P-69, P-77, P-93; PX6 P-105) Payments for credit card accounts were also drawn from the PNC account. (PX5 P-69, P-86; PX6, P-118) Initially, Wood was responsible for reconciling the account (D.I. 60 at 30-31), but eventually Heberer assumed management of the account. (D.I. 60 at 54) He stored the financial information on his business computer. (Id. at 55) Heberer maintained a separate bank account in Virginia. (PX7)

12. In the summer of 1995, Wood received a second call from Sharon Metzler. Metzler said that she and Heberer were dating again and that he was also seeing another woman. (D.I. 60 at 26)

13. As a result of this information, Wood ended her engagement with Heberer but continued to wear the engagement ring. (Id. at 27, 34) They nonetheless continued to date each other. Wood told Heberer she would purchase the Ramunno Circle home in her name only. Heberer agreed to the removal of his name

from the purchase documents. An Addendum to the Agreement of Sale was executed in which Heberer was removed as a purchaser and Wood was recognized as proceeding, individually, to settlement with the same financing as previously approved. (PX1)

14. The purchase of the Ramunno Circle house was consummated on October 20, 1995, with Wood as the sole obligor on the Note and Mortgage. (PX-3) The home became Wood's primary residence. Heberer also resided at the home on weekends and maintained a home office there.

15. Together, Wood and Heberer made improvements to Ramunno Circle. (D.I. 60 at 35) Their projects included: 1) painting the interior of the home; 2) building a brick walkway; and 3) constructing a wine cellar. Heberer installed an audio/visual system in the sunroom and built a stone patio in the back of the home. (Id. at 175, 35) They furnished the home with pieces Wood had in the Florence home and furniture Heberer had in his Virginia home. (Id. at 35) Funds from the PNC account were used to buy additional home furnishings and decor.

16. In 1997, Wood began providing financial advice to help Heberer's business. (Id. at 64) Using her financial expertise, Wood examined the monthly statements for opportunities to reduce costs and increase cash flow. (Id. at 65) She also conducted conference calls with Heberer's sales staff to initiate plans to increase sales. (Id. at 64) Wood also provided financial

assistance to Heberer's business. (Id. at 53)

17. In 1998, Heberer's mother, Patricia Meador ("Meador"), moved into Ramunno Circle with Wood and Heberer. Meador lived at the house without paying rent.

18. After several months, Meador moved out of Ramunno Circle and into the Condominium. (Id. at 42-43) Although Wood charged Meador rent, Meador often was unable to make the payments. Wood paid the Condominium fees and related expenses from the PNC Account. Meador lived at the Condominium for less than two years.

19. In 1998, Heberer purchased a \$40,000 1998 Mercedes Benz ML 320, through his business, for Wood. The car was partially paid for with a \$25,000 second mortgage loan by Wood on Ramunno Circle. (Id. at 37-39) During this year, Wood and Heberer began collecting wine. (Id. at 36)

20. In May, 2000 Wood sold the Condominium and the proceeds were deposited in the PNC account.

21. In June 2000, Wood accepted a job offer and transfer to Mexico. Although their relationship continued, they no longer needed a home in Delaware and decided to sell Ramunno Circle. (Id. at 30)

22. In August 2000, the Ramunno Circle house sold for \$325,000. The profit on the sale, \$113,373.44, was automatically deposited into the PNC account. The balance of the second

mortgage to pay for the Mercedes was paid from the sale of the house. (Id. at 37, 66-68) Wood's employer paid her a bonus of 3% of sale price for selling her home quickly. (Id. at 46) This amount, \$6,878.62, was automatically deposited into the PNC account.

23. Although Wood moved to Mexico and Heberer returned to Virginia, their relationship continued. (Id. at 30-31) Much of their furniture was moved to Mexico, while some items were moved to Virginia and others placed in storage in the United States. (Id. at 45) Most of the wine collection was boxed and moved to Heberer's Virginia residence. Wood opened a bank account in Mexico (the "pesos account"). (Id. at 48) A small part of her paycheck was deposited in the pesos account and the larger amount was deposited into the PNC account.

24. In September 2000, Wood and Heberer agreed they wanted to earn more interest on the money in the PNC account. They decided to invest the proceeds from the sale of Ramunno Circle as well as any extra funds held in the PNC account. (Id. at 48) In October, they opened a joint account² ("S&S") with a Virginia stock brokerage firm, Scott & Stringfellow. (Id. at 51; DX25,

²The account application reflects that this account was registered as a "joint account with right of survivorship" defined as "your interest in it being as joint tenants and not as tenants in common so that on the death of either of you the survivor will be the sole owner of whatever monies and property may remain to the credit of the account." (DX 25 at p. 5)

26) Heberer opened the dual signature account which prevented either party from removing funds without the consent of the other party. (D.I. 60 at 52) Heberer withdrew about \$130,000 from the PNC account and deposited it into the S&S account. (Id. at 50, 55; PX6 at P-131, P-125)

25. In November 2000, Wood ended her relationship with Heberer. In January, 2001, Heberer withdrew funds from PNC which caused Wood's rent check to be returned for insufficient funds. (D.I. 60 at 79) In February 2001, Wood closed the PNC account and opened a new account in her name only.

III. DISCUSSION

Wood contends that Heberer is not entitled to any of the PNC funds and should be ordered to restore the monies that he appropriated while she lived in Mexico. (D.I. 64) Wood argues that the proceeds from the sales of Ramunno Circle and the Condominium are hers exclusively because her funds were used for the purchases. Further, the circumstances surrounding their relationship, Wood asserts, do not warrant imposition of a constructive or resulting trust. In addition to repayment of funds, Wood seeks \$15,000 in damages based on her estimation of additional undocumented and unauthorized expenditures made by Heberer. With the exception of her retaining the engagement ring, plaintiff contends that the remaining personal property should be divided equitably by the court.

Heberer asserts that the parties had an implied contract to share in the benefits of their relationship and that he did not tortiously convert any funds or property. (D.I. 65) He maintains that the funds and effort he contributed to the relationship require that the court impose a resultant trust or constructive trust upon the property and proceeds of the relationship. He argues that Wood is not entitled to keep the engagement ring and seeks particular personal property.

IV. CONCLUSIONS OF LAW

A. PNC Account

In her complaint, Wood asserts that Heberer committed the tort of conversion of property. Conversion is an act of dominion wrongfully exerted over the property of another, in denial of his right, or inconsistent with it." Drug, Inc. v. Hunt, 168 A. 87, 93 (Del. 1933); Arnold v. Society for Savings Bancorp, Inc., 678 A.2d 533, 535-36 (Del. 1996). There is no evidence at bar that Heberer converted Wood's property. The record reflects, instead, a long-term relationship³ including cohabitation where each party enjoyed and shared the property of the other. To that end, the PNC account was created to facilitate their joint purchase of a

³Delaware does not recognize common-law marriage, which is "one that takes legal effect when a couple live together as husband and wife, intend to be married, and hold themselves out to others as husband and wife without a marriage license or ceremony." Wilmington Finishing Co. v. Leary, 2000 WL 303320 at *3 (Del. 2000); Wilmington Trust Co. v. Hendrixson, 114 A. 215 (Del. 1921).

home in Delaware. The account was established in both their names and each had unfettered and equal access to the funds.

To create a joint tenancy "there must be an equal right in all of the tenants to share in the enjoyment during their lives, and this means that unity of possession (along with unity of interest, title and time) is an essential element of such ownership." Farmers Bank of the State of Delaware v. Howard, 258 A.2d 299, 301 (Del. Ch. 1969); Walsh v. Bailey, 197 A.2d 331, 333 (Del. 1964). To create a "joint tenancy with survivorship, language specifically showing an intent to create such relationship must have been used." Bothe v. Dennie, 324 A2d 784, 788 (Del. Super. 1974). The presence of appropriate language, however, will not control if it appears that the parties did not intend to create a joint tenancy. See Speed v. Palmer, 2000 WL 1800247 (Del. Ch. 2000) (actual access helps to determine true joint tenancy).

The evidence of record confirms that Wood and Heberer held the PNC account as joint tenants. Specifically, each party moved funds in and out, by and large for their joint benefit and with the consent of the other. (D.I. 59 at 46; D.I. 60 at 31, 38; see PX5 at P-27, P-39, P-60, P-64,, P-68, P-69, P-71, P-76, P-77, P-81, P-85, P-92, P-96,P-100; PX6 at P-104, P-107) There was no credible evidence that either party voiced any objection to such joint use at the times the funds were being so used and certainly

no evidence that either attempted to close the account for the other's improper use of funds. Surely savvy businesspeople, such as these, understood each other had that right. Their subsequent creation of the S&S account, with the dual signature requirement, demonstrates they understood the nuances between the accounts.

Moreover, neither party is entitled to reimbursement for efforts intended to jointly benefit the other and which are, under all sensible principles, viewed as gifts of affection and devotion to a common goal. See Hill v. Baker, 102 A.2d 923, 925 (Del. 1953) (a gift is a voluntary transfer of property from one to another without any consideration given) Courts should not be used to mediate squabbles simply because the parties have failed to clearly delineate their intentions in terms different than they appear. If the court is to believe both parties' testimony that they cared for each other, the contributions are presumed to have been given in the spirit supported by that testimony. The court sees no reason to involve itself in a mutually consensual financial relationship simply because the non-financial aspects of the relationship have failed.

B. S&S Account

Unlike the PNC account, this account required both parties to sign for removal of funds. Like the PNC account, however, this account is one of joint tenancy. Because the funds in the account were generated from Delaware and deposited in Virginia,

where the account has always existed, both states arguably have an interest in an application of their respective laws.

To determine which state's law governs the controversy before it, a Delaware federal court sitting in diversity applies Delaware choice-of law rules. Klaxon Co. v. Stentor Electric Mfg. Co., 313 U.S. 487 (1941). In contract actions, Delaware courts apply the "most significant relationship" test to determine which law applies to the dispute, assuming the laws of the probable jurisdictions in fact conflict with one another. See Oliver B. Cannon & Son, Inc., v. Dorr-Oliver, Inc., 394 A.2d 1160 (Del. 1978); Travelers Indemnity Co. v. Lake, 594 A.2d 38 (Del. 1991). A choice-of-law analysis is not required, however, where the laws of the relevant jurisdictions do not conflict. Lucker Mfg. v. Homes Ins. Co., 23 F.3d 808 (3d Cir. 1994); Oil Shipping B.V. v. Sonmez Denizcilik v. Ticaret A.S., 10 F.3d 1015 (3d Cir. 1993).

Delaware and Virginia law on joint tenancy is essentially the same. Farmers Bank of the State of Delaware v. Howard, 258 A.2d 299, 301 (Del. Ch. 1969); Walsh v. Bailey, 197 A.2d 331, 333 (Del. 1964); Buck v. Jordan, 508 S.E.2d 880 (Va. 1998). Therefore, the court looks to Delaware law on the subject. Having sat as the trier of fact and evaluated the demeanor of witnesses, their testimony and the documentary evidence produced, the court is convinced that a joint tenancy was created.

Specifically, the intent of the parties was clearly to create a joint account, to be shared equally, but depleted on agreement of both. See infra fn. 2 For example, Wood's conduct in allowing Heberer to deposit \$100,000 into the S&S account knowing that he was named as joint owner and allowing another deposit with the same understanding, demonstrates an intention to create a joint account. Further, the S&S opening documentation that was signed by both parties defines the rights of joint tenants upon the death of the other. From Wood's perspective, the court cannot conceive how a financial executive for one of the world's largest companies could mistakenly assume her own financial account was not being jointly held and managed with the likely expectation that the parties would continue either in an unmarried or married relationship to share in the funds. The history clearly established such an intention, as evidenced by the unfettered access each had to the PNC account. In fact, Wood has produced no credible evidence to the contrary nor rebutted the presumption of a joint tenancy.

Having found a joint tenancy, the court is required to follow established law on the account's dissolution. As much as Wood has tried to portray the analysis as one based upon equitable principles, Delaware does not recognize such a resolution. Instead, the joint account must be dissolved according to a presumed equal ownership. Although most of the

funds were generated by Wood's efforts, she had the ability before opening the account to secure sole ownership and control in the event another breakup occurred. Recalling the tumultuous relationship and the steps Wood earlier took to protect herself in this regard, such as placing Ramunno Circle in her name only, the court cannot view her as a naive and uneducated investor and partner. Equal dissolution is something that Wood knew or should have known to have existed.

C. Personal Property

Although Wood and Heberer quarrel over the precise distribution of the many household items, furniture and personal effects, they both agree that the court should equitably divide the property. Given this direction, the court finds that equity demands that Wood receive all of the personal property in issue, including the engagement ring. Because much of this property was obtained through the PNC account that she generated individually but deposited into a joint account, it is only fair that she receive the benefit of her labor. The one sentimental item, Heberer's grandfather's watch, will be returned to him.

V. CONCLUSION

An order consistent with this Opinion shall issue.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

DEBORAH J. WOOD,)	
)	
Plaintiff,)	
)	
v.)	Civ. No. 01-223-SLR
)	
ARTHUR C. HEBERER, III,)	
)	
Defendant.)	

O R D E R

At Wilmington this 4th day of March, 2004, consistent with the opinion issued this same day;

IT IS ORDERED that:

1. On or before **April 1, 2004**, the parties shall close and liquidate the S&S account. The funds shall be divided and dispersed equally between plaintiff and defendant.

2. On or before **April 1, 2004**, plaintiff shall return to defendant his grandfather's watch.

3. The Clerk of Court shall enter judgment in favor of both parties consistent with the terms of the opinion issued concomitantly.

Sue L. Robinson
United States District Judge